## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PACE-O-MATIC, INC.,

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Plaintiff : No. 1:20-cv-00292

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v. : (Judge Jennifer P. Wilson)

(Magistrate Judge Joseph F. Saporito,

ECKERT SEAMANS CHERIN & : Jr.)

MELLOTT, LLC,

.

Defendant. : Electronically Filed Document

## HAWKE MCKEON & SNISCAK, LLP STATEMENT OF APPEAL

(From February 16, 2021 Nondispositive Order Overruling Attorney-Client Privilege Objection to Non-Party Subpoena)

Hawke McKeon & Sniscak, LLP (HMS), pursuant to Fed. R. Civ. P. 72(a) and L.R.72.2, hereby appeals from portions of Paragraph 4 of Magistrate Judge Joseph F. Saporito, Jr.'s February 16, 2021 Order and accompanying Memorandum, Section III. I (Judicial Estoppel and Implied Waiver of Privilege) at 32-42 (2021 WL 602733) (Doc. 87), which overrule HMS's objections to plaintiff Pace-O-Matic, Inc.'s (POM) subpoena and order production of documents identified in HMS's privilege log as to which HMS has claimed attorney-client privilege.

As more fully explained in HMS's supporting brief, in concluding that HMS

is "estopped from asserting attorney-client privilege," Doc. 87 at 36, Section III.I of

the Memorandum misstates and misapplies the doctrine of judicial estoppel to the

facts of this case. Contrary to the Memorandum's conclusion, the facts as to HMS

do not support any of the elements that could give rise to judicial estoppel. G-I

Holdings, Inc. v. Reliance Ins. Co., 586 F.3d 247, 261-262 (3d Cir. 2009).

HMS's appeal is limited to Section III.I of the Memorandum and the

associated documents the Order directs HMS to produce.

Respectfully submitted,

/s/ Dennis A. Whitaker

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Dated: March 2, 2021

2

## **CERTIFICATE OF SERVICE**

I hereby certify that, on March 2, 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States Court District Court for the Middle District of Pennsylvania by using the ECF system. Pursuant to LR 5.7, participants in the case who are registered ECF users will be served by the ECF system.

/s/ Dennis A. Whitaker